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AUG 11 2011

OFFICE OF PETITIONS

GEORGE CHESTER COX
APT#2B
1887 AMSTERDAM AVE
NEW YORK NY 10032

In re Application of :
George Chester Cox :
Application No. 10/765,544 :
Filed: January 27, 2004 :
Attorney Docket No. None :

ON PETITION

This is a decision in response to the petition filed July 18, 2011, which is being treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181 (no fee) in the above-identified application.

The petition under 1.181 is **DISMISSED**.

Any request for reconsideration of this decision should be submitted within two (2) months from the mail date of this decision and be entitled "Renewed Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181." See 37 CFR 1.181(f).

This application was held abandoned for failure to reply to the Final Office action mailed October 30, 2008, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on May 11, 2009.

Petitioner asserts that the Office action dated October 30, 2008, was not timely received and therefore asks that the abandonment be withdrawn and the time period for reply be restarted.

A review of the file record indicates that on October 30, 2008, the Office mailed a final Office action to the correspondence address of record at that time, which was P.O. Box 86 Bedford Hills, NY 10507. The final Office action was returned to the Office on November 12, 2008, no mail receptacle was specified as the reason for return. As annotate in the file record, a copy of the Office action dated October 30, 2008, was mailed to the applicant as a courtesy at the address provided on the last received response dated October 6, 2008. On May 11, 2009, the Office mailed a Notice of Abandonment, on June 2, 2009, that notice was also returned as undeliverable, attempted not known was specified as the reason for return. The file record confirms that the Office action mailed on October 30, 2008, was properly mailed to the address of record and therefore no irregularity in the mailing of the Office action occurred.

DISCUSSION OF PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

Petitioner argues that the alleged remailing of the Final Office action did not leave him enough time to respond to the Office action and that the remailing of that Office action should have reset the response period. As pointed out by petitioner, a remailing of an Office action should reset the period for response as discussed in MPEP 707.13. Although Office records do not show formal remailing of that Office action, the copy of the remailed envelope provided with the petition shows a date stamp of January 7, 2009. Resetting the period for response would have required a response due by April 7, 2009. However, petitioner did not file a response until July 8, 2009 which was six months after the reset response period requested by petitioner. No extension of time was requested. Therefore, even if the Office had formally reset the period for response to the final Office action, petitioner's response was still late and the application properly held abandoned at that point.

ALTERNATIVE VENUE

Petitioner is strongly encouraged to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application instead of filing a renewed petition under 37 CFR 1.181 or a petition under 37 CFR 1.137(a).

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed. In nonprovisional utility application abandoned for failure to respond to a non-final Office action, the required reply may be met by filing either (A) an argument or amendment under 37 CFR 1.111 or (B) a continuing application under 37 CFR 1.53(b).
- (2) The petition fee as set forth in 37 CFR 1.17(m), **\$810.00 for a small entity**;
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

A form for filing a petition to revive an unintentionally abandoned application accompanies this decision for petitioner's convenience. If petitioner desires to file a petition under 37 CFR 1.137(b) instead of filing a request for reconsideration, petitioner must complete the enclosed petition form (PTO/SB/64) and pay the \$810.00 petition fee.

Petitioner may wish to consider hiring a registered patent attorney or agent to assist in the prosecution of this application. Additionally, petitioner is encouraged to contact the Inventors Assistance Center (IAC) by telephone at 800-786-9199 or 571-272-1000, Monday through Friday from 8:30 AM to 5:30 PM (EST). The IAC provides patent information and services to the public and is staffed by former Supervisory Patent Examiners and experienced Primary Examiners who answer general questions concerning patent examining policy and procedure.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By Hand: Customer Service Window

Randolph Building
401 Dulany Street
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By Fax: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries related to this decision may be directed to Alicia Kelley-Collier at (571) 272-6059.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

Enclosures: Petition For Revival Of An Application For Patent Abandoned Unintentionally Under CFR 1.137(b); Form PTO/SB/64, Privacy Act Statement.